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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/590,611

08/24/2006

Artjom Lutkov

66126(70301)

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07/08/2009

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EXAMINER

AMERSON, LORI BAKER

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

07/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/590,611 | LUTKOV, ARTJOM | |
| | Examiner | Art Unit | |
| | Lori Amerson | 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-26 and 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/25/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 18-35 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

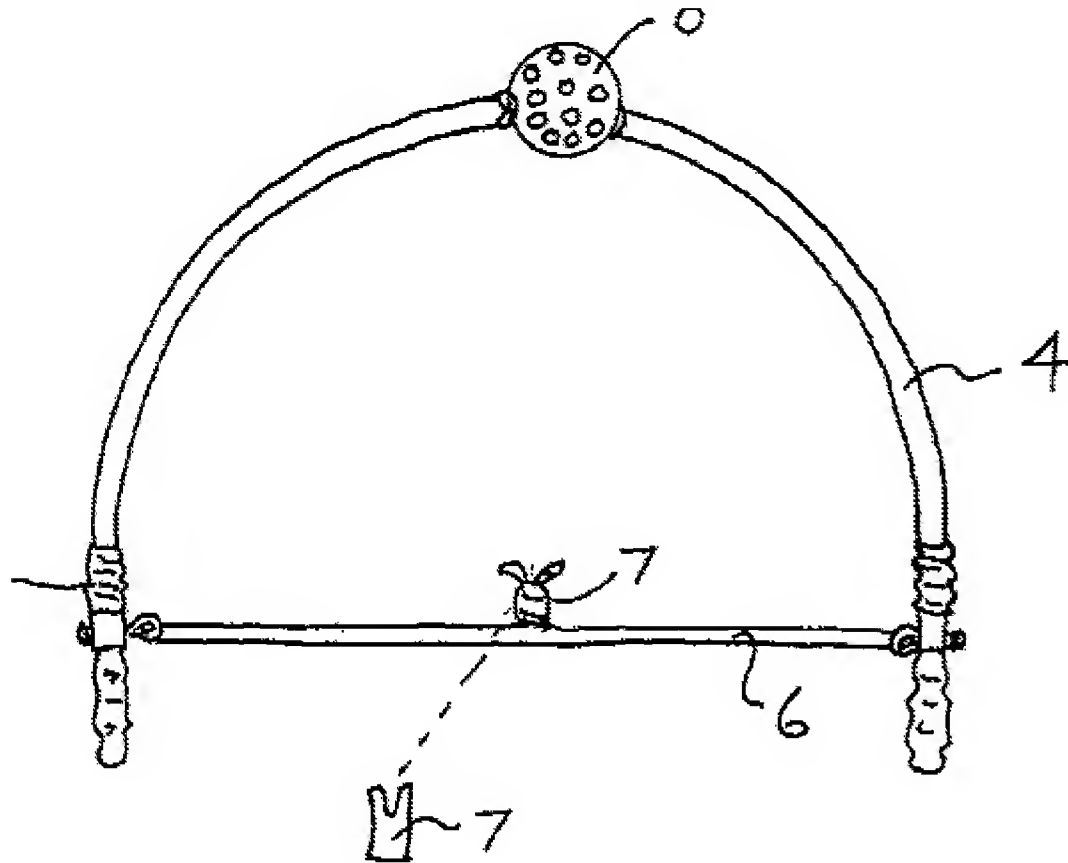
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 18, 22-24, 26, 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Deal.

A sports device comprising an elongated body 4 extending in a longitudinal direction (see abstract), the elongated body comprising at least two handles 1, wherein the handles are configured to respectively accommodate a hand or a foot, and wherein the elongated body can be elastically flexed from the longitudinal direction, the elongated body further comprising respective body ends and having borings transverse the

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longitudinal direction (see figure 4 below where eyebolts are attached at opposite ends of 6) through the elongated body, wherein the handles are attached close to the respective body ends by



of

said borings; wherein the elongated body has a resting position and, in said resting position, comprises a shape of a cylinder; wherein the elongated body has a resting position and, in said resting position, comprises a shape, a cross-section of which in at least a main portion along the length of the body has the form of a circle, a half circle, a rectangle, a square, a polygon, a rhombus, a kite-form or a trapezoid; the elongated body further comprising an end that is planar or rounded; wherein the handles are

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attached separately to the elongated body; wherein in a resting position the elongated body is about 2 to 15 cm in width and about 40 to 150 cm in length.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

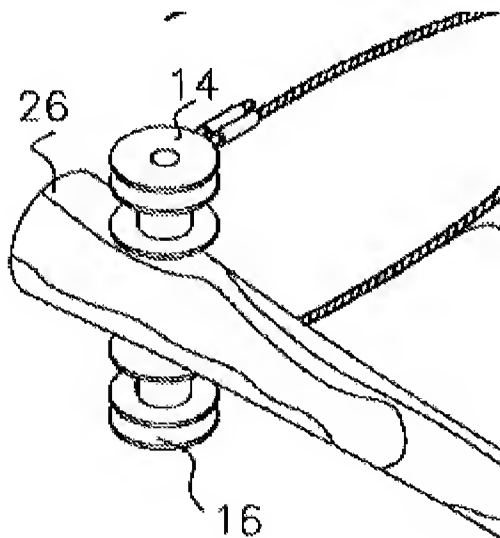
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Casagrande et al. Deal discloses all of the limitations of the invention except for the buoyant foam material for swimming. Thus, Casagrande et al shows in figure 1 a device used for swimming made from buoyant foam. The claim would have been obvious because “a person of ordinary skill has good reason to pursue the known options (i.e., increasing the resistance by adapting the device to be used in water) within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”

2. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Ladin. Deal discloses all of the limitations of the invention except for the signal color. Thus, Ladin teaches a device used for swimming having a color indicator. The claim would have been obvious because “a person of ordinary skill has good reason to

pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”

3. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Halsworth. Deal discloses all of the limitations of the invention except for tube thru the boring. Thus, Halsworth teaches et al shows in figure 1 a device having a transverse boring with a tube insertion. The claim would have been obvious because “a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”



4. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Macmillan. Deal discloses all of the limitations of the invention except for each handle formed independently by a hoop and/or a loop wherein the hoop and/or

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loop comprise a cushioning made of soft material, which are at least partially enclosed the hoop and/or loop. Thus, Macmillan teaches a handle 27 comprising a loop. The claim would have been obvious because “a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”

5. Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Malynowsky. Deal discloses all of the limitations of the invention except for at least one standing holder, into which the elongated body is inserted.

Thus, Malynowsky teaches a stand 14, 15 to which the device can be inserted. The claim would have been obvious because “a person of ordinary skill has good reason to pursue the known options (i.e., increasing the resistance by adapting the device to be used in water) within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lori Amerson/
Primary Examiner, Art Unit 3764